



Control Number: 52221



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PUCT Docket No. 52221

Public Utility Commission of Texas – June 17th, 2021

**Formal Complaint
against Mid American Energy Services LLC and
Motion to Allow Suffolk Business Solutions to be added to PUCT Docket #**

COMES NOW, Suffolk Business Solutions from the spring of 2018, and file this formal complaint against Mid American Energy Services LLC, (“MES”), for violations of the Public Utility Regulatory Act (PURA) and Public Utility Commission of Texas (“Commission”) Substantive Rules. In accordance with P.U.C. Subst. Rule 25.471, 25.474, 25.480, and 25.481, Suffolk Business Solutions seeks the Commission’s involvement in resolving disputes between Suffolk Business Solutions and MES primarily regarding unauthorized charges for electric service and possible fraudulent or deceptive trade practices. Despite efforts, including an informal complaint, to resolve these disputes, Suffolk Business Solutions and MES have not succeeded in doing so. By this proceeding, Suffolk Business Solutions complain of MES’s actions, and request that the Commission grant all appropriate relief, including an order prohibiting MES from further attempts to collect unauthorized charges and requiring MES to refund any unauthorized charges that may have been paid to date by Suffolk Business Solutions.

I. Overview

The core facts of this joint complaint are as follows. Suffolk Business Solutions and MES entered into electric service agreements in May of 2018 in which the ancillary charge was supposed to be, and up to February of 2021 were, fixed for the duration of the agreements. In addition, the agreements make no provision for MES to unilaterally transform the fixed ancillary rate into a variable ancillary rate. Contrary to the terms of these agreements, MES has been charging and attempting to collect unauthorized charges from Suffolk Business Solutions for ancillary services that occurred during February, 2021.

II. Commission Jurisdiction over This Proceeding

At the same time that the Texas Legislature enacted the bill establishing customer choice,¹ it also enacted a bill to protect customers once retail competition began in 2002.² To accomplish this customer protection goal, the legislature found that it was “essential that customers have safeguards against fraudulent, unfair, misleading, deceptive, or anticompetitive business practices.”³ The Commission’s general jurisdiction over a customer complaint arises under PURA §§ 17.001, 39.001, 39.101 and PURA Subchapters A, C, and D. Not only does the Commission have general authority to protect customers, PURA tasks the Commission to protect customers from specified conduct. One of those protections is that electric service providers are prohibited from attempting to collect unauthorized charges from customers.⁴ Another is protection against “fraudulent, unfair, misleading, deceptive, or anticompetitive business practices” as stated in PURA 17.001.

This Complaint also arises generally from rules the Commission enacted to implement its customer protection authority, and, more specifically, P.U.C. Subst. R. 25.107, 25.471, 25.474, 25.480, 25.481 and 25.485, particularly as they pertain to retail electric providers (REP). The Commission also has authority to take enforcement action against MES as set forth by PUC Subst. R. 25.492.

III. Statement of Facts

In support of its complaint, Suffolk Business Solutions would show as follows:

- 1) Inertia Energy requested Variable Pricing Adder with all cost components other than Energy fixed for duration of contract.
- 2) MES responded to said bid request and presented their Variable Pricing Adder as such.
- 3) Appendix A to this filing lists the “Billing Adjustments” being levied by MES against Suffolk Business Solutions.

¹ Senate Bill 7 in 1999.

² Senate Bill 86 in 1999

³ PURA § 11.002.

⁴ PURA Subchapter D.

4) With regards to all items included in the “Variable Price Adder” the contract states in Schedule B, paragraphs 5, 6 and 7 (see the contract snippet on the following page), that ancillary services are clearly included as fixed. The clear and implied meaning of including items in this section of the contract is that the pricing should not change, absent, as provided for elsewhere in the agreement, for reasons beyond the reasonable control of MES (force majeure, change in law, etc). It is incredulous at least, and deceptive or fraudulent at worst, to claim a cost is fixed in the contract while having every intention of charging the customer a different price if you so desire.

5) Elsewhere in the agreement - Schedule B, page 2, paragraph 3 states:

Any future changes in the business practice or business protocols of the Delivery Company, RTO, or ISO, Ancillary charges or applicable Delivery charges or transmission tariffs that affect the items included in the applicable Fixed Price and/or Variable Price, as defined in this Schedule B, may be incorporated herein as a separate adjustment as of the effective date on which the change occurs or thereafter

And, on the same page, paragraph 5:

CHANGE IN LAWS. Costs incurred by MidAmerican, whether positive or negative, after the date of this Schedule, resulting from changes in applicable federal or state law, tariffs or the regulatory interpretation that can be reasonably allocated to Customer, will be billed as an authorized charge or adjustment or reduction to prices as defined in the Schedules of this Agreement. In the event of a change in law, either Party then has the right to terminate this Agreement upon 30 days advance written notice to the other Party and any settlement amount shall be calculated according to the Events of Default, Remedies section of the Agreement. Such changes in applicable federal or state law or tariffs or regulatory interpretation will not be deemed an event of Force Majeure

MES has referenced paragraph 3 as the provision of the contract that allows them to pass through the extra ancillary service costs. Suffolk Business Solutions have a very different interpretation of this paragraph given its context in the rest of the agreement and its construction in this paragraph. Our understanding, based on conversations with MES sales personell, was that the listing of “Ancillary charges or applicable delivery charges or transmission tariffs that affect the items...” were examples of the items that could be changed by “Any future changes in the business practice or business protocols of the Delivery Company, RTO or ISO” from earlier in the sentence. This is how the paragraph was explained to Inertia Energy when we were negotiating the deal, making it essentially similar to, but slightly different from, a change in law. According to that interpretation we have asked MES what changes in “business practice or business protocols” they

believe justify passing through these additional costs and they have yet to respond with any justification other than repeatedly referencing this contract language.

- 6) It is Suffolk Business Solutions' contention that there has been no change in law or change in protocol or business practice that would allow MES to pass through any additional costs.

IV. Complainant's Informal Resolution Attempts

Inertia Energy has attempted several times to resolve these disputes with MES of these unauthorized charges, only to be told matter is closed.

VI. Suffolk Business Solutions Representative

The representative is:

Eric Hutchins
Inertia Energy Advisors LLC
Eric@inertiaenergyadvisors.net

4700 Gilbert Ste 47
Western Springs, IL 60558
Phone: 248.390.2214

Suffolk Business Solutions request that all correspondence, pleadings, orders, briefs and other documents be served upon representative electronically at the email address shown above.

VIII. Relief Sought

Suffolk Business Solutions seeks all appropriate relief within the Commission's jurisdiction for the matters alleged herein. Suffolk Business Solutions specifically request the Commission to require MES and its employees and agents to remove any charges beyond the agreed to cost from the winter event.

Respectfully submitted,

Eric Hutchins

Eric Hutchins,
President
Inertia Energy Advisors LLC

Eric@inertiaenergyadvisors.net

Appendix A

Listing of “Billing Adjustments” charged to Suffolk Business Solutions

Store #1893-2
1135 Crabb River Rd
Richmond

\$68.25

Store #1389-14
1009 S Jackson
Jacksonville

\$1517.04

Store #1389-1
1500 North St
Nacogdoches

\$2063.71

Store #1893-1
1782 US HWY 181
Portland

\$1761.96

Store #1389-4
2020 Lamar Ave
Paris

\$1994.09

Store #1389-10
840 W 7th Ave
Corsicana

\$1887.37